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Debtors in Possession, as Appellees*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11
	:
SEARS HOLDINGS CORPORATION, et al.,	: Case No. 18-23538 (RDD)
	:
Debtors.¹	: (Jointly Administered)
-----X	

**DEBTORS' COUNTERSTATEMENT OF ISSUES TO BE PRESENTED
ON APPEAL AND COUNTERDESIGNATION OF ITEMS
TO BE INCLUDED IN RECORD ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure
(the "**Bankruptcy Rules**") and Rule 8009-1 of the Local Bankruptcy Rules for the Southern

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

District of New York (the “**Local Rules**”), Sears Holdings Corporation and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), submit the following counterstatement of issues to be presented on appeal and counterdesignation of additional items to be included in the record in connection with the appeal of Winners’ Industry Co., Ltd. (“**Winners**”), filed October 28, 2019 [Docket No. 5522], from the *Order Denying Vendors’ Motions for Allowance and Payment of Administrative Expense Claims* [Docket No. 5371], entered by this Bankruptcy Court in the above-captioned chapter 11 cases on October 15, 2019, to the United States District Court for the Southern District of New York.

Debtors reserve their rights to supplement or amend the statement of issues to be presented on appeal and to designate additional items for inclusion in the record in the appeal.

**COUNTERSTATEMENT OF ISSUES
TO BE PRESENTED ON APPEAL**

1. Did the Bankruptcy Court correctly determine as a matter of law that Winners was not entitled to an administrative expense claim under section 503(b)(1) of the Bankruptcy Code based solely on delivery of goods by a common carrier to the Debtors after the petition date?

2. Did the Bankruptcy Court correctly defer ruling on factual issues related to Winners’ purported reliance on the *Final Order Authorizing Debtors to (I) Pay Prepetition Claims of (A) Shippers, Warehousemen, and Other Non-Merchandise Lien Claimants and (B) Holders Of PACA/PASA Claims, and (II) Confirm Administrative Expense Priority for Prepetition Orders Delivered to the Debtors Postpetition, and Satisfy Such Obligations in the Ordinary Course Of Business?*

**COUNTERDESIGNATION OF ITEMS
TO BE INCLUDED IN RECORD ON APPEAL**

Debtors designate the following items to be included in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and/or referenced within such items. By submitting this counterdesignation, the Debtors do not waive, and expressly reserve, their rights to seek to dismiss and otherwise challenge Winner's appeal. Further, by submitting this counterdesignation, the Debtors do not waive, and expressly reserve, their rights to rely on any of the documents designated by Winners in the *Appellant Winners Industry Co., Ltd.'s Statement of Issues to be Presented and Designation of Items to be Included in the Record on Appeal* [Docket No. 5911].

No.	Document	Docket No.	Docket Entry Date
1	Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York	3	10/15/2018
2	Interim Order Authorizing Debtors to (I) Pay Prepetition Claims of (A) Shippers, Warehousemen, and Other Non-Merchandise Lien Claimants, and (B) Holders of PACA/PASA Claims, and (II) Confirm Administrative Expense Priority for Prepetition Order Delivered to the Debtors Postpetition and Satisfy Such Obligations in the Ordinary Course of Business	115	10/16/2018
3	Notice of Filing of Exhibits to the Disclosure Statement for Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors	4060	5/29/019
4	Disclosure Statement for Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors	4390	6/28/2019
5	Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors	5293	10/1/2019
6	Debtors' Supplemental Memorandum of Law in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors	5296	10/1/2019
7	Supplemental Declaration of Brian J. Griffith in Support of Confirmation of Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors	5297	10/1/2019

No.	Document	Docket No.	Docket Entry Date
8	Copy of Bankruptcy Court Docket Report Through November 25, 2019	N/A	N/A

No.	Hearing Transcript	Docket No.	Docket Entry Date
1	Transcript of Hearing Held on October 15, 2018	136	10/16/2018
2	Transcript of Hearing Held on November 15, 2018	4803	8/9/2019
3	Transcript of Hearing Held on May 29, 2019	4799	5/31/2019

Dated: November 25, 2019
New York, New York

/s/ Garrett A. Fail

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